

## REMARKS

Reconsideration and allowance of this application are respectfully requested in light of the foregoing amendments and the following remarks.

### Claim Status

Claims 1-8 were presented in the originally filed application. In a preliminary amendment filed with the application claims 3-6 were amended and new claims 9-13 were added. In this response claims 2, 8-10, 12 and 13 are cancelled. Claims 1, 3-7 and 11 are pending.

### ELECTION/RESTRICTION

In the restriction requirement of April 11, 2008, the Examiner restricted this case to eight different inventions:

Group I: Claims 1, 3, and 4 are drawn to  $\delta$ -crystalline form of perindopril erbumine, characterized by the distinct X-ray diffraction data, or medicaments containing said crystalline form;

Group II: Claims 2, 9, and 10 are drawn to  $\epsilon$ -crystalline form of perindopril erbumine, characterized by the distinct X-ray diffraction data, or medicaments containing said crystalline form;

Group III: Claims 5 and 6 are drawn to a method for the treatment of cardiovascular diseases comprising administering said  $\delta$ -crystalline form of perindopril erbumine, or said medicaments according to claim 1;

Group IV: Claim 7 is drawn to a process for the preparation of  $\delta$ -crystalline form of perindopril erbumine according to claim 1;

Group V: Claim 8 is drawn to a process for the preparation of  $\varepsilon$ -crystalline form of perindopril erbumine according to claim 2;

Group VI: Claim 11 is drawn to a method for the preparation medicaments comprising  $\delta$ -crystalline form of perindopril erbumine according to claim 1;

Group VII: Claim 12 is drawn to a method for the preparation medicaments comprising  $\varepsilon$ -crystalline form of perindopril erbumine according to claim 1;

Group VIII: Claim 13 is drawn to a method for the treatment of cardiovascular diseases comprising administering said  $\varepsilon$ -crystalline form of perindopril erbumine according to claim 2, or said medicaments.

In order to comply with the restriction rules Applicant elects

Group I with traverse. Applicant retains the right to file one

or more divisional applications on the subject matter not elected here.

In the instant application there are only two independent claims 1 and 2. Claim 1 is drawn to  $\delta$ -crystalline form of perindopril erbumine, characterized by the distinct X-ray diffraction data. Claim 2 is drawn to  $\epsilon$ -crystalline form of perindopril erbumine, characterized by the distinct X-ray diffraction data. In the instant case groups I, III, IV, VI are all drawn to or depend on claim 1, which is drawn to  $\delta$ -crystalline form of perindopril erbumine, characterized by the distinct X-ray diffraction data.

Claims 5 and 6 have been amended in a manner that should bring them now into Group I. Applicant respectfully requests that the restriction on claims 5 and 6 be removed in view of the amendment and allowed along with the claims of Group I.

Applicant would like to remind the Office of 37 CFR 1.141(b) which states:

(b) Where claims to all three categories, product, process of making, and process of use, are included in a national application, a three way requirement for restriction can only be made where the process of

making is distinct from the product. If the process of making and the product are not distinct, the process of using may be joined with the claims directed to the product and the process of making the product even though a showing of distinctness between the product and process of using the product can be made.

Applicant here has made a claim that the product is distinctive and has dependent claims for the preparation and use of this product. Therefore under 37 CFR 1.141 (b), groups I, III, IV and VI, all belong in the same application, drawn to  $\delta$ -crystalline form of perindopril erbumine, characterized by the distinct X-ray diffraction data.

Pursuant to the restriction requirement claims 2, 8-10, 12 and 13 have been withdrawn as belonging to a group or species not elected. For the same reasons given above Applicant believes that these groups should belong to only one group. Applicant retains the right to file one or more divisional applications on the subject matter not elected here.

#### IDS

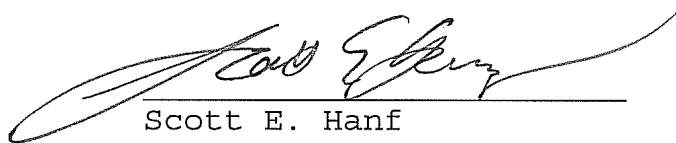
Applicant has been just been made aware that some of the foreign language references that we submitted have an English

equivalent, those equivalents are being filed with this application. As these references are being submitted prior to the first action on the merits no fee is believed to be due.

As Applicants have not exceeded the number of claims which they originally paid for, no new fee is believed to be due. However, if the office determines that a credit is due, or an additional fee is necessary, than they are authorized to charge deposit account 08-2447.

Reconsideration and allowance of this application is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott E. Hanf", written over a horizontal line.

Scott E. Hanf  
Attorney for Applicant  
Registration No. 38,906

**Customer No. 29494**  
**Hammer & Hanf, P.C.**  
3125 Springbank Lane  
Suite G  
Charlotte, NC 28226  
Telephone: 704-927-0400  
Facsimile: 704-927-0485  
H:\2084\005\RestrictionResponse050608.doc